

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VAN DINH LE, deceased, through his
successor in interest Amy Thu bich Le, AMY
THU BICH LE, KEVIN LE, VIVIAN LE

Plaintiff,

v.

CITY OF ESCONDIDO, JIM MAHER, City
of Escondido Police Chief in his individual
and official capacities, MATTHEW
NELSON, Police Officer, Individually, and
DOES 1 through 10, Jointly and Severally

Defendants.

Civil No. 11-2241 BEN (NLS)

**ORDER DENYING RESUBMISSION
OF JOINT MOTION FOR ORDER
REQUIRING PRODUCTION OF
MEDICAL EXAMINER RECORDS**

[Doc. No. 18]

Plaintiffs filed this action alleging that Defendants used excessive force that resulted in the death of Plaintiffs' decedent. Defendants issued a subpoena to the Office of the Medical Examiner for the taking of the deposition of Deputy Medical Examiner Bethann Schaber and for the production of all records relating to the investigation of decedent's death. The Office of the Medical Examiner told defense counsel that it would not produce the photographs and x-rays responsive to the subpoena without a court order. The parties filed an initial Joint Motion seeking an order compelling the Office of the Medical Examiner to produce all records, including the photographs and x-rays, responsive to the subpoena, subject to a protective order. [Docket No. 16.] The court denied that motion because it was not apparent that notice was given to the Office of the Medical Examiner. The court could not order a third party to produce documents without giving that third party either notice of the motion or a chance

1 to object to the production.

2 The parties refiled the Joint Motion, showing proof of service of the motion on the Office of the
3 Medical Examiner. The court confirmed with the Office of the Medical Examiner that it did not object
4 to producing the information; rather, the Office of the Medical Examiner needs a court order to comply
5 with California law.

6 California law provides:

7 . . . no copy, reproduction, or facsimile of any kind shall be made of any
8 photograph, negative, or print, including instant photographs and video
9 recordings, of the body, or any portion of the body, of a deceased person,
10 taken by or for the coroner at the scene of death or in the course of a post
11 mortem examination or autopsy made by or caused to be made by the
12 coroner . . . except as a court of this state permits, by order after good
cause has been shown and after written notification of the request for the
court order has been served, at least five days before the order is made,
upon the district attorney of the county in which the post mortem
examination or autopsy has been made or caused to be made.

13 Cal. Code Civ. Proc. § 129.

14 It is not apparent that the parties have complied with the notification requirement to the District
15 Attorney, according to section 129. Therefore, the court **DENIES without prejudice** the resubmission
16 of the Joint Motion for Order Requiring Production of Medical Examiner Records. The parties must
17 show compliance with the state law and that notice of the motion was served on the Office of the
18 Medical Examiner.

19 **IT IS SO ORDERED.**

20
21 DATED: August 6, 2012

22 

23 Hon. Nita L. Stormes
24 U.S. Magistrate Judge
25 United States District Court
26
27
28